STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GREGORY ELIJAH RIPPIE,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANGELIA AKINS,

Respondent-Appellant,

and

GREGORY RIPPIE,

Respondent.

UNPUBLISHED
December 1, 2000

No. 223870
Wayne Circuit Court
Family Division
LC No. 93-309209

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Respondent-appellant Angelia Akins (hereinafter respondent) appeals as of right from the family court order terminating her parental rights to the minor child under MCL 712A.19b(3)(f); MSA 27.3178(598.19b)(3)(f). We reverse and remand.

Respondent argues that the family court erred in terminating her parental rights without the benefit of counsel. Although this Court has stated that MCR 5.915(B)(1)[1] mandates the

[1] MCR 5.915(B), which governs the assistance of an attorney in child protective proceedings, provides:

(B) Child Protective Proceedings.

(1) *Respondent.*

(continued…)

appointment of counsel for indigent parents at all hearings in a child protective proceeding, *In re Osborne*, 230 Mich App 712, 716; 584 NW2d 649 (1998), vacated on other grounds 459 Mich 360 (1999), the court rule requires affirmative action on the part of the parent to trigger the appointment and continuation of appointed counsel in all hearings which may affect the parent's rights. *In re Hall*, 188 Mich App 217, 218; 469 NW2d 56 (1991).

Here, while respondent never appeared to request counsel, she claims that she was unable to do so because she had no knowledge of the permanent custody proceedings. Thus, our resolution of this issue depends on whether proper notice of the proceeding was provided.

In termination of parental rights cases, a failure to provide notice of a hearing by personal service as required by statute, MCL 712A.12; MSA 27.3178(598.12), is a jurisdictional defect that renders all proceedings in the family court void. *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991); *In re Brown*, 149 Mich App 529, 534-542; 386 NW2d 577 (1986). Under MCR 5.920(B)(4)(b), if personal service is impracticable or cannot be achieved, the court may direct that service be made by certified mail addressed to the last known address of the party. MCR 5.920(B)(4)(c) provides that if the court finds that service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication. MCL 712A.13; MSA 27.3178(598.13) permits service by registered mail or publication if the court is satisfied that it is impracticable to personally serve the notice of a termination proceeding. The alternative methods of service set forth in MCL 712A.13; MSA 27.3178(598.13) are sufficient to confer jurisdiction on the family court. *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993).

(…continued)

> (a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that
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> (i) the respondent has the right to a court-appointed attorney if the respondent is financially unable to retain counsel, and,
>
> (ii) if the respondent is not represented by an attorney, that the respondent may request and receive a court-appointed attorney at any later hearing.
>
> (b) When it appears to the court, following an examination of the record, through written financial statements, or through other means that the respondent is financially unable to retain an attorney and the respondent desires an attorney, the court shall appoint one to represent the respondent at any hearing conducted pursuant to these rules.
>
> (c) The respondent may waive the right to an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent or guardian ad litem objects to the waiver.

Several attempts were made to notify respondent of the permanent custody proceedings by alternative service. With regard to the permanent custody hearing on July 28, 1999, there is no indication in the record that personal service was impracticable or could not be achieved, or that service could not be made because respondent's whereabouts had not been determined after reasonable effort. Further, the record does not contain any documentation authorizing alternative methods of service. The record does indicate that a certified letter was sent to respondent's last known address and that notice by publication was also made before the hearing. However, as the referee noted, another person signed for the certified letter and the notice by publication did not correctly state respondent's name. The referee therefore concluded that proper service was lacking but that, in light of respondent's lifestyle, including her drug habit and mental health issues, personal service or service by certified mail would be impossible and that an attempt to notify respondent of a continued hearing by publication would be appropriate. The referee stated that he would make findings and enter a final order after notice of the continued hearing was published. However, the second notice by publication also failed to correctly state respondent's name.

The trial court erred by failing to determine that reasonable efforts had been made to locate respondent before it allowed substituted service by mail or publication. See *In re Adair*, *supra* at 714-715. Because respondent was not properly notified of the permanent custody proceedings, she could not properly waive the right to counsel under MCR 5.915(B)(1). Under the circumstances, therefore, the family court erred in terminating respondent's parental rights.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter